



6351-01-P

## **COMMODITY FUTURES TRADING COMMISSION**

### **17 CFR Part 143**

### **RIN 3038-AE69**

### **Annual Adjustment of Civil Monetary Penalties to Reflect Inflation - 2019**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is amending its rules governing the maximum amount of civil monetary penalties to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the Commodity Exchange Act (CEA) and Commission rules, regulations and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and is applicable to penalties assessed after January 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Riccobene, Associate Chief Counsel, Division of Enforcement, at (202) 418-5327 or [ericcobene@cftc.gov](mailto:ericcobene@cftc.gov), Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA)<sup>1</sup> requires the head of each Federal agency to periodically adjust for inflation the minimum and maximum amount of CMPs provided by law within the jurisdiction of that agency.<sup>2</sup> A 2015 amendment to the FCPIAA<sup>3</sup> required agencies to make an initial “catch-up” adjustment to its civil monetary penalties effective no later than August 1, 2016.<sup>4</sup> For every year thereafter effective not later than January 15, the FCPIAA, as amended, requires agencies to make annual adjustments for inflation, with guidance from the Director of the Office of Management and Budget.<sup>5</sup>

## **II. Commodity Exchange Act Civil Monetary Penalties**

The following sections of the CEA provide for CMPs that meet the FCPIAA definition<sup>6</sup> and these CMPs are, therefore, subject to the inflation adjustment: Sections 6(c), 6b, and 6c of the CEA.<sup>7</sup>

## **III. Annual Inflation Adjustment for Commodity Exchange Act Civil Monetary Penalties**

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<sup>1</sup> The FCPIAA, Pub. L. 101-410 (1990), as amended, is codified at 28 U.S.C. 2461 note. The FCPIAA states that the purpose of the FCPIAA is to establish a mechanism that (1) allows for regular adjustment for inflation of civil monetary penalties; (2) maintains the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improves the collection by the Federal Government of civil monetary penalties.

<sup>2</sup> For the relevant CMPs within the Commission’s jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules, regulations and orders promulgated thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

<sup>3</sup> Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114-74, 129 Stat. 584 (2015) (2015 Act), title VII, Section 701.

<sup>4</sup> FCPIAA Sections 4 and 5. See also, Adjustment of Civil Monetary Penalties for Inflation, 81 FR 41435 (June 27, 2016).

<sup>5</sup> FCPIAA Sections 4 and 5. See also, Executive Office of the President, Office of Management and Budget Memorandum, M-19-04, Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 14, 2018) (2018 OMB Guidance) ([https://www.whitehouse.gov/wp-content/uploads/2017/11/m\\_19\\_04.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf)).

<sup>6</sup> FCPIAA Section 3(2).

<sup>7</sup> 7 U.S.C. 9, 13a-1, 13b. Criminal authorities may also seek fines for criminal violations of the CEA (see 7 U.S.C. 13, 13(c), 13(d), 13(e), and 13b). The FCPIA does not affect the amounts of these criminal penalties.

## A. Methodology

The FCPIAA annual inflation adjustment, in the context of the CFTC’s CMPs, is determined by increasing the maximum penalty by a “cost-of-living adjustment”, rounded to the nearest multiple of one dollar.<sup>8</sup> Annual inflation adjustments are based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI-U) preceding the date of the adjustment, and the prior year’s October CPI-U.<sup>9</sup> In this case, the October 2018 CPI-U (252.885)/October 2017 CPI-U (246.663) = 1.02522.<sup>10</sup> In order to complete the 2019 annual adjustment, the CFTC must multiply each of its most recent CMP amounts by the multiplier, 1.02522, and round to the nearest dollar.<sup>11</sup>

## B. Civil Monetary Penalty Adjustments

Applying the FCPIAA annual inflation adjustment methodology results in the following amended CMPs:

| U.S. Code Citation   | Civil Monetary Penalty Description                         |  | Violations Occurring on or After 11/02/2015     |                  |                             |
|--|--|--|---|------------------|-----------------------------|
|  |  |  | Penalty Amount in 2018 Final Rule <sup>12</sup> | CPI-U Multiplier | New Adjusted Penalty Amount |
| Civil Monetary Penalty Imposed By The Commission In An Administrative Action |  |  |   |                  |                             |
| 7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act)                      | For any person other than a registered entity <sup>1</sup> | Non-Manipulation or Attempted Manipulation | \$161,115                                       | 1.02552          | \$165,227                   |

<sup>8</sup> FCPIAA Sections 4 and 5.

<sup>9</sup> FCPIAA Section 5(b)(1).

<sup>10</sup> The CPI-U is published by the Department of Labor. Interested parties may find the relevant Consumer Price Index on the Internet. To access this information, go to the Consumer Price Index Home Page at: <http://www.bls.gov/cpi/>. Click the “CPI Data/Databases” heading, and select “All Urban Consumers (Current Series)”, “Top Picks.” Then check the box for “U.S. All items, 1982-84=100 - CUUR0000SA0”, and click the “Retrieve data” button.

<sup>11</sup> 2018 OMB Guidance at 3.

<sup>12</sup> 83 FR 9426.

|   |   |  |             |         |             |
|---|---|--|-------------|---------|-------------|
|   | For any person other than a registered entity <sup>1</sup>                          | Manipulation or Attempted Manipulation     | \$1,162,183 | 1.02552 | \$1,191,842 |
| 7 U.S.C. 13a (Section 6b of the Commodity Exchange Act)   | For a registered entity <sup>1</sup> or any of its directors, officers or employees | Non-Manipulation or Attempted Manipulation | \$887,509   | 1.02552 | \$910,158   |
|   | For a registered entity <sup>1</sup> or any of its directors, officers or employees | Manipulation or Attempted Manipulation     | \$1,162,183 | 1.02552 | \$1,191,842 |
| <i>Civil Monetary Penalty Imposed By A Federal District Court In A Civil Injunctive Action</i>                  |   |  |             |         |             |
| 7 U.S.C. 13a-1 (Section 6c of the Commodity Exchange Act)   | Any Person  | Non-Manipulation or Attempted Manipulation | \$177,501   | 1.02552 | \$182,031   |
|   | Any Person  | Manipulation or Attempted Manipulation     | \$1,162,183 | 1.02552 | \$1,191,842 |
| <sup>1</sup> The term “Registered Entity” is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act). |   |  |             |         |             |

The FCPIAA provides that any increase under the FCPIAA in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.”<sup>13</sup> Thus, the new CMP amounts established by this rulemaking shall apply to penalties assessed after January 15, 2019, for violations that occurred on or after November 2, 2015, the effective date of the FCPIAA amendment requiring annual adjustments, the 2015 Act.

#### **IV. Administrative Compliance**

##### **A. Notice Requirement**

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<sup>13</sup> FCPIAA Section 6.

The FCPIAA specifically exempted from the Administrative Procedure Act (APA) the rulemakings required to implement annual inflation adjustments.<sup>14</sup> “This means that the public procedure the APA generally requires (*i.e.*,—notice, an opportunity for comment, and a delay in effective date) is not required for agencies to issue regulations implementing the annual adjustment.”<sup>15</sup> The Commission further notes that the notice and comment procedures of the APA do not apply to this rulemaking because the Commission is acting herein pursuant to statutory language that mandates that the Commission act in a nondiscretionary matter.<sup>16</sup>

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act<sup>17</sup> requires agencies with rulemaking authority to consider the impact of certain of their rules on small businesses. A regulatory flexibility analysis is only required for rules for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) or any other law.<sup>18</sup> Because, as discussed above, the Commission is not obligated by section 553(b) or any other law to publish a general notice of proposed rulemaking with respect to the revisions being made to § 143.8, the Commission additionally is not obligated to conduct a regulatory flexibility analysis.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)<sup>19</sup>, which imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not

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<sup>14</sup> FCPIAA Section 4(b)(2).

<sup>15</sup> 2018 OMB Guidance at 4.

<sup>16</sup> *Lake Carriers' Ass'n v. E.P.A.*, 652 F.3d 1, 10 (D.C. Cir. 2011).

<sup>17</sup> 5 U.S.C. 601-612.

<sup>18</sup> 5 U.S.C. 603(a).

<sup>19</sup> 44 U.S.C. 3507(d).

apply to this rule. This rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

#### D. Consideration of Costs and Benefits

Section 15(a) of the CEA<sup>20</sup> requires the Commission to consider the costs and benefits of its action before issuing a new regulation. Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission believes that benefits of this rulemaking greatly outweigh the costs, if any. As the Commission understands, the statutory provisions by which it is making cost-of-living adjustments to the CMPs in § 143.8 were enacted to ensure that CMPs do not lose their deterrence value because of inflation. An analysis of the costs and benefits of these adjustments were made before enactment of the statutory provisions under which the Commission is operating, and limit the discretion of the Commission to the extent that there are no regulatory choices the Commission could make that would supersede the pre-enactment analysis with respect to the five factors enumerated in section 15(a), or any other factors.

#### **List of Subjects in 17 CFR Part 143**

Civil monetary penalties, Claims.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends part 143 of title 17 of the Code of Federal Regulations as follows:

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<sup>20</sup> 7 U.S.C. 19(a).

**PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES**

**ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION**

1. The authority citation for part 143 continues to read as follows:

**Authority:** 7 U.S.C. 9, 15, 9a, 12a(5), 13a, 13a-1(d), 13(a), 13b; 31 U.S.C. 3701-3720E; 28 U.S.C. 2461 note.

2. Revise § 143.8(b) to read as follows:

**§143.8 Inflation-adjusted civil monetary penalties.**

\* \* \* \* \*

(b) *2019 Inflation adjustment.* The maximum amount of each civil monetary penalty in the following charts applies to penalties assessed after January 15, 2019:

(1) For non-manipulation or attempted manipulation violations:

Table 1 to Paragraph (b)(1)

| U.S. Code Citation  | Civil Monetary<br>Penalty<br>Description  | Date of Violation and Corresponding Penalty |                                     |                                     |                          |
|---|---|---|-------------------------------------|-------------------------------------|--------------------------|
|   |   | 10/23/2004<br>through<br>10/22/2008         | 10/23/2008<br>through<br>10/22/2012 | 10/23/2012<br>through<br>11/01/2015 | 11/02/2015 to<br>Present |
| Civil Monetary Penalty Imposed By The Commission In An Administrative Action            |   |   |                                     |                                     |                          |
| 7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act)                                 | For any person other than a registered entity <sup>1</sup>                          | \$130,000                                   | \$130,000                           | \$140,000                           | \$165,227                |
| 7 U.S.C. 13a (Section 6b of the Commodity Exchange Act)                                 | For a registered entity <sup>1</sup> or any of its directors, officers or employees | \$625,000                                   | \$675,000                           | \$700,000                           | \$910,158                |
| Civil Monetary Penalty Imposed By A Federal District Court In A Civil Injunctive Action |   |   |                                     |                                     |                          |
| 7 U.S.C. 13a-1 (Section 6c of the Commodity   | Any Person  | \$130,000                                   | \$140,000                           | \$140,000                           | \$182,031                |

|  |  |  |  |  |  |
|--|--|--|--|--|--|
| Exchange Act)  |  |  |  |  |  |
| The term “Registered Entity” is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act). |  |  |  |  |  |

(2) For manipulation or attempted manipulation violations:

Table 1 to Paragraph (b)(2)

| U.S. Code Citation  | Civil Monetary Penalty Description  | Date of Violation and Corresponding Penalty |                               |                               |                       |
|---|---|---|-------------------------------|-------------------------------|-----------------------|
|   |   | 10/23/2004 through 05/21/2008               | 05/22/2008 through 08/14/2011 | 08/15/2011 through 11/01/2015 | 11/02/2015 to Present |
| Civil Monetary Penalty Imposed By The Commission In An Administrative Action                                    |   |   |                               |                               |                       |
| 7 U.S.C. 9 (Section 6(c) of the Commodity Exchange Act)   | For any person other than a registered entity <sup>1</sup>                          | \$130,000                                   | \$1,000,000                   | \$1,025,000                   | \$1,191,842           |
| 7 U.S.C. 13a (Section 6b of the Commodity Exchange Act)   | For a registered entity <sup>1</sup> or any of its directors, officers or employees | \$625,000                                   | \$1,000,000                   | \$1,025,000                   | \$1,191,842           |
| Civil Monetary Penalty Imposed By A Federal District Court In A Civil Injunctive Action                         |   |   |                               |                               |                       |
| 7 U.S.C. 13a-1 (Section 6c of the Commodity Exchange Act)   | Any Person  | \$130,000                                   | \$1,000,000                   | \$1,025,000                   | \$1,191,842           |
| <sup>1</sup> The term “Registered Entity” is defined in 7 U.S.C. 1a (Section 1a of the Commodity Exchange Act). |   |   |                               |                               |                       |

Issued in Washington, DC on February 6, 2019, by the Commission.

Robert Sidman,

*Deputy Secretary of the Commission.*



NOTE: The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Adjustment of Civil Monetary Penalties for Inflation—Commission  
Voting Summary**

On this matter, Chairman Giancarlo, and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

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